



ADOPTED

BOARD OF SUPERVISORS
COUNTY OF LOS ANGELES

#23 DECEMBER 6, 2011

Sachi A. Hamai
SACHI A. HAMAI
EXECUTIVE OFFICER

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Board of Supervisors

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December 06, 2011

The Honorable Board of Supervisors
County of Los Angeles
383 Kenneth Hahn Hall of Administration
500 West Temple Street
Los Angeles, California 90012

Dear Supervisors:

**REQUEST FOR DELEGATED AUTHORITY TO EXECUTE AGREEMENTS
FOR ADDITIONAL MANAGED CARE PAYMENTS
(ALL SUPERVISORIAL DISTRICTS)
(3 VOTES)**

SUBJECT

Request approval and delegation of authority to the Department of Health Services (DHS) to execute amendments to agreements with the Local Initiative Health Authority for Los Angeles County (L.A. Care) and Health Net of California, Inc. (Health Net) to allow DHS providers to receive additional Medi-Cal managed care payments.

IT IS RECOMMENDED THAT YOUR BOARD:

Delegate authority to the Director of Health Services (Director), or his designee, to prepare and execute, on behalf of the County of Los Angeles, amendments to existing agreements with L.A. Care and Health Net, respectively, in order for DHS to receive additional Medi-Cal managed care payments that are funded through intergovernmental transfers ("IGTs") for the service period January 1, 2011 through June 30, 2011.

PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION

The recommendation will authorize the Director to enter into the necessary amendments similar to Exhibits I and II, to the existing agreements with L.A. Care and Health Net, to allow DHS to receive supplemental Medi-Cal managed care payments of approximately \$7.2 million from L.A. Care and \$3.5 million from Health Net for the service period January 1, 2011 through June 30, 2011. The contracts will, however, be for the period January 1, 2011, through January 30, 2013, to allow the parties time to complete the payment and confirmation process. The local match portion of these payments will be funded by IGTs authorized by your Board on May 24, 2011.

The Centers for Medicare and Medicaid Services (CMS) must review and approve all Medi-Cal managed care payments and pertinent documents before the agreements can be executed. Exhibits I and II are based on templates previously approved by CMS and accordingly, are likely to be close to the documents which are ultimately executed.

However, if CMS requires changes that are material, DHS will return to your Board for a new delegation of authority. Otherwise, DHS will notify your Board when the amendments are executed.

Implementation of Strategic Plan Goals

The recommended action supports Goal 4, Health and Mental Health of the County Strategic Plan, by maximizing federal revenue streams for patient care at County health facilities.

FISCAL IMPACT/FINANCING

Approval of this action will allow DHS to receive supplemental Medi-Cal managed care payments from L.A. Care of approximately \$7.2 million, and \$3.5 million from Health Net. These payments will be financed by IGTs of approximately \$3.1 million (for L.A. Care) and \$1.5 million (for Health Net), for a total of \$4.6 million, paid to the California Department of Health Care Services (DHCS). DHS' FY 2010-11 Final Actual recognized the payment and IGT accruals for this program.

FACTS AND PROVISIONS/LEGAL REQUIREMENTS

On September 8, 2010, the Governor signed AB 1653 which implemented the hospital quality assurance fee (hospital provider fee) in California for the period April 1, 2009 through December 31, 2010. This fee provided supplemental Medi-Cal revenue through a number of different mechanisms and DHS was able to receive additional payments through direct grants and managed care rate increases in FY 2010-11. No special agreements with either L.A. Care or Health Net were required to access these funds.

On April 13, 2011, the Governor signed a bill which included the Medi-Cal Hospital Rate Stabilization Act of 2011, which continued the hospital provider fee for the period January 1 through June 30, 2011. However, under this bill, DHS may only obtain additional revenue if it provides IGTs. Understanding this, on May 24, 2011, your Board delegated authority to the Director to execute agreements with DHCS for IGTs to finance the additional managed care payments.

The Board's action on May 24, 2011 did not provide a delegation of authority to sign amendments to the agreements with L.A. Care and Health Net to allow DHS to receive the supplemental Medi-Cal payments, since agreements had not been necessary previously. However, DHCS is now requiring

DHS to have agreements with each health plan covering the IGT funded payments authorized by the Medi-Cal Hospital Rate Stabilization Act of 2011.

In order to expedite the receipt of this revenue, as soon as CMS approves the documents, DHS is requesting delegation of authority from your Board to execute the L.A. Care and Health Net agreements related to such revenues.

CONTRACTING PROCESS

Not applicable.

IMPACT ON CURRENT SERVICES (OR PROJECTS)

Approval of this recommendation will allow DHS to receive increased federal revenue and meet the revenue projections included in the DHS Fiscal Outlook dated August 30, 2011.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Mitchell Katz". The signature is fluid and cursive, with the first name "Mitchell" written in a larger, more prominent script than the last name "Katz".

Mitchell H. Katz, M.D.

Director

MHK:hr

Enclosures

c: Chief Executive Office
County Counsel
Executive Office, Board of Supervisors

HEALTH PLAN/PROVIDER AGREEMENT

This Amendment is made this ____ day of _____ {month/year}, by and between the Local Initiative Health Authority for Los Angeles County, doing business as L.A.Care Health Plan, a local government agency hereinafter referred to as "PLAN", and the County of Los Angeles on behalf of its Community Health Plan, hereinafter referred to as "PROVIDER".

RECITALS:

WHEREAS, PLAN and PROVIDER have previously entered into an Agreement effective January 1, 2010;

WHEREAS, Section 10.05 of such Agreement provides for amending such Agreement;

WHEREAS, PLAN has been designated as Los Angeles County's locally created health care service plan by the Los Angeles County Board of Supervisors. It is a public entity, created pursuant to Welfare and Institutions Code Sections 14087.38(b) and 14087.9605 and Los Angeles County resolution and ordinance. PLAN is licensed by the Department of Managed Health Care as a health care service plan under the California Knox Keene Act (Health and Safety Code Sections 1340 et seq.). In the body of the Agreement, PLAN is known as "Local Initiative;" however, for purposes of this amendment it shall be designated as described above.

WHEREAS, PROVIDER operates a duly licensed as a pre-paid full service health care service plan under the Knox-Keene Act, known as the Community Health Plan, which arranges for the provision of health care services to enrollees through providers owned and operated by the County of Los Angeles as well as other entities. Although in the Agreement, the PROVIDER's Community Health Plan is referred to as "PLAN", for purposes of this amendment, it shall be referred to by the designation listed above. Depending on context, the word "PROVIDER" as used in this document may refer to the Community Health Plan, or in Paragraph 1.F below, it may also refer to the facilities owned and operated by the County;

WHEREAS, PLAN and PROVIDER desire to amend the Agreement to provide for supplemental payments to PLAN as a result of intergovernmental transfers from the County of Los Angeles to the California Department of Health Care Services ("State DHCS") to maintain the availability of Medi-Cal health care services to Medi-Cal beneficiaries. Such intergovernmental transfers are authorized pursuant to S.B. 90, which added Section 14168.7 to the Welfare and Institutions Code.

NOW, THEREFORE, PLAN and PROVIDER hereby agree as follows:

42. Managed Care Supplemental Payment of the Agreement is added to read as follows:

42. MANAGED CARE SUPPLEMENTAL PAYMENT

1. Supplemental Payments to PLAN

A. Payment

Should PLAN receive any Medi-Cal managed care capitation rate increases from State DHCS where the nonfederal share is funded by the County of Los Angeles specifically pursuant to the provisions of the Intergovernmental Agreement Regarding Transfer of Public Funds ("Intergovernmental Agreement") effective for the period January 1, 2011 through June 30, 2011, for Intergovernmental Transfer Funded Rate Increases pursuant to Welfare and Institutions Code Section 14168.7 ("IGT Rate Increases"), PLAN shall pay to PROVIDER the amount of the IGT Rate Increases received from State DHCS, in accordance with paragraph 1.E below regarding the form and timing of Local Medi-Cal Managed Care Supplemental Payments ("LMSPs"). LMSPs paid to PROVIDER shall not replace or supplant any other amounts paid or payable to PROVIDER by PLAN including, but not limited to, amounts resulting from capitation rate range increases as described in Section 14301.4(b)(4) of the Welfare and Institutions Code.

B. Health Plan Retention**1) Managed Care Organizations (MCO) Tax**

The PLAN shall be responsible for any Managed Care Organization ("MCO") tax due pursuant to the Revenue and Taxation Code Section 12201 relating to any IGT Rate Increases. If the PLAN receives any capitation rate increases for MCO taxes based on the IGT Rate Increases, PLAN may retain an amount equal to the amount of such MCO tax that PLAN is required to pay to the State DHCS, and shall pay, as part of the LMSPs, the remaining amount of the capitation rate increase to PROVIDER.

2) PLAN will not retain any other portion of the IGT Rate Increases received from the State DHCS other than those mentioned above.

C. Conditions for Receiving Supplemental Payments

In addition to all other obligations imposed on PROVIDER by the Agreement, PROVIDER agrees that it will continue to make the following services available to PLAN's Medi-Cal enrollees through March 31, 2012:

- Level 1 TraumaCenters at LAC+USC Medical Center and Harbor/UCLA Medical Center;
- a basic emergency room at Olive View Medical Center;
- a burn unit at LAC+USC Medical Center;
- a hyperbaric oxygen therapy chamber located on Catalina Island.

D. Schedule and Notice of Transfer of Non-Federal Funds

PROVIDER shall notify PLAN within five (5) days of the date of the transfer of funds to State DHCS pursuant to the Intergovernmental Agreement.

E. Form and Timing of Payments

PLAN agrees to pay LMSPs to PROVIDER in the following form and according to the following schedule:

(1) PLAN agrees to pay the LMSPs to PROVIDER using the same mechanism through which compensation and payments are normally paid to PROVIDER (e.g., electronic transfer).

(2) PLAN will pay the LMSPs to PROVIDER no later than thirty (30) calendar days after receipt of the IGT Rate Increases from State DHCS.

F. Consideration

(1) As consideration for the LMSPs, PROVIDER shall use the LMSPs for the following purposes and shall treat the LMSPs in the following manner:

(a) The LMSPs shall represent compensation for Medi-Cal services rendered to Medi-Cal PLAN members by PROVIDER and shall represent compensation for Medi-Cal services to Medi-Cal PLAN members during the State fiscal year to which the LMSPs apply.

(b) To the extent that total payments received by PROVIDER in any State fiscal year under this Amendment exceed the cost of Medi-Cal services provided to Medi-Cal beneficiaries by PROVIDER during that fiscal year, any remaining LMSP amounts shall be retained by PROVIDER to be expended for health care services, including but not limited to, the funding of expenditures under the California Section 1115 Medicaid Demonstration entitled "California's Bridge to Reform" (Waiver 11-1-00193/9). Retained LMSP amounts may be used by the PROVIDER in either the State fiscal year received or subsequent State fiscal years.

(2) For purposes of subsection (1) (b) above, if the LMSPs are not used by PROVIDER in the State fiscal year received, retention of funds by PROVIDER will be established by demonstrating that the retained earnings account of PROVIDER at the end of any State fiscal year in which it received payments based on LMSPs funded pursuant to the Intergovernmental Agreement, has increased over the unspent portion of the prior State fiscal year's balance by the amount of LMSPs received, but not used. These retained PROVIDER funds may be commingled with other County funds for cash management purposes provided that such funds are appropriately tracked and only the depositing facility is authorized to expend them.

(3) Both parties agree that none of these funds, either from the County of Los Angeles or federal matching funds, will be recycled back to the County general fund, the State, or any other intermediary organization. However, nothing in this section shall preclude the use of these funds as allowable sources under paragraphs 33 and 39 of the Special Terms and Conditions for the Section 1115 Demonstration.

G. PLAN's Oversight Responsibilities

PLAN's oversight responsibilities regarding PROVIDER's use of the LMSPs shall be limited as described in this paragraph. PLAN shall request, within thirty (30) calendar days after the end of each State fiscal year in which LMSPs were transferred to PROVIDER, a written confirmation that states whether and how PROVIDER complied with the provisions set forth in Paragraph 1.F above. In each instance, PROVIDER shall provide PLAN with written confirmation of compliance within thirty (30) calendar days of PLAN's request.

H. Cooperation Among Parties

Should disputes or disagreements arise regarding the ultimate computation or appropriateness of any aspect of the LMSPs, PROVIDER and PLAN agree to work together in all respects to support and preserve the LMSPs to the full extent possible on behalf of the safety net in Los Angeles County.

I. Indemnification

1. Notwithstanding (a) anything to the contrary contained in Sections 6.05(a), 8.02, 10.07 and 10.14 of this Agreement, or (b) any other provision of this Amendment, the County shall indemnify and hold PLAN harmless against any losses, claims, demands, liabilities, court costs, judgments and expenses, imposed by a court or otherwise incurred by PLAN after the execution date of this Amendment as a result of PLAN's receipt of IGT Rate Increases or payment of LMSPs, including but not limited to the following circumstances:

(a) In the event that State DHCS, the Department of Health and Human Services or any other federal or state agency recoups, offsets, or otherwise withholds any monies from or fails to provide any monies to PLAN, or PLAN is denied any monies to which it otherwise would have been entitled, for any reason relating to the Medi-Cal managed care capitation rate increases arising from the Intergovernmental Agreement as such increases flow through the Medi-Cal Agreement between PLAN and the State and this Agreement, including but not limited to (i) State DHCS' use of IGT Rate Increases or LMSPs to supplant or replace other amount in violation of the restrictions in Section 2.2 of the Intergovernmental Agreement; (ii) the failure of the IGT Rate Increases to qualify in whole or part for federal participation pursuant to 42 C.F.R. part 433, subpart B; or (iii) overpayment of IGT Rate Increases to PLAN by State DHCS, PLAN shall have a right to immediately recoup, offset or withhold any and all such amounts from payments otherwise due to PROVIDER. Recovery by PLAN pursuant to this section shall include, but not be limited to, reduction in future LMSPs paid to PROVIDER in an amount equal to the amount of IGT Rate Increases I payments recovered from PLAN, or by reduction of any other amounts owed by PLAN to PROVIDER;

(b) PLAN shall pursue an appeal, a lawsuit, or any other available legal action to challenge any recoupment by State DHCS, the Department of Health and Human Services, or any other federal or state agency, that is not required by law, unless after

consultation with PROVIDER and with good cause, PLAN determines that it is not in the best interest of PLAN and/or PROVIDER to do so;

(c) At PLAN's discretion, PROVIDER shall either provide or arrange for legal representation on PLAN's behalf or PLAN shall arrange for its own representation and be entitled to reasonable attorney's fees and costs from PROVIDER for such representation, in addition to any and all other relief to which PLAN may be entitled, including, but not limited to, the following circumstances:

(1) If any action at law, suit in equity, arbitration, or administrative action is brought against PLAN by State DHCS, the Department of Health and Human Services, any other federal or state agency or other individual or organization to: (i) enforce or interpret the IGT Rate Increases or LMSPs; or (ii) recoup, offset, or otherwise withhold any monies from PLAN relating to the IGT Rate Increases or LMSPs; or

(2) If PLAN brings any appeal, action at law, suit in equity, arbitration or administrative action against the State DHCS, the Department of Health and Human Services or any other federal or state agency to (i) enforce or interpret the IGT Rate Increases or LMSPs; or (ii) in response to an action described in subparagraph (a) or subparagraph (c)(1) above:

(d) If PLAN prevails in any appeal, action at law, suit in equity, arbitration, or administrative action against PROVIDER to enforce or interpret the IGT Rate Increases or LMSPs or to recoup, offset, or otherwise withhold any monies relating to the IGT Rate Increases or LMSPs, PLAN shall be entitled to reasonable attorney's fees and costs from PROVIDER; and

(2) In the event that PLAN believes that it is subject to any losses, claims, demands, liabilities, court costs, judgments or obligations to third parties which arise before the execution of this Amendment as a direct result of the parties' intention to enter into this Amendment or the terms of this Amendment, PLAN shall promptly notify PROVIDER of such belief. The parties will then negotiate, in good faith, the extent to which PROVIDER will provide indemnification. It is the parties' intention that PLAN not be substantially economically harmed as a result of its willingness to enter into this Amendment.

2. Term

The term of this Amendment shall commence on January 1, 2011 and shall terminate on January 30, 2013 for IGT payments made during the 2011/12 FY, except that paragraph 1.3, 1.f, 1.g and 1.H above which shall survive the termination of this Amendment and /or the underlying Agreement.

All other terms and provisions of said Agreement shall remain in full force and effect so that all rights, duties and obligations, and liabilities of the parties hereto otherwise remain unchanged; provided, however, if there is any conflict between the terms of this Amendment and the Agreement, then the terms of this Amendment shall govern.

SIGNATURES

LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY, d.b.a L.A.
CARE HEALTH PLAN

By: _____
Howard A. Kahn
Chief Executive Officer

Date: _____

COUNTY OF LOS ANGELES

By: _____
Mitchell H. Katz, M.D.
Director, Department of Health Service

Date: _____

HEALTH PLAN/PROVIDER AGREEMENT

This Amendment is made this ____ day of _____ {month/year}, by and between Health Net of California Inc. , a California corporation license pursuant to Health and Safety Code section 1349 et seq., to act as a health plan, hereinafter referred to as "PLAN", and the County of Los Angeles on behalf of its Department of Health Services hereinafter referred to as "PROVIDER".

RECITALS:

WHEREAS, PLAN and PROVIDER have previously entered into an Agreement effective February 16, 1999;

WHEREAS, Section 37 of such Agreement provides for amending such Agreement;

WHEREAS, Health Net Community Solutions, Inc., a corporate entity licensed under Health and Safety Code section 1349 et seq, has a contract with the State Department of Health Care Services pursuant to Welfare and Institutions Code section 14087.3 to act as a Medi-Cal managed care plan. Health Net Community Solutions Inc. has contracted with Health Net of California Inc. to fulfill some of its responsibilities for the provision of Medi-Cal covered health care services for eligible Medi-Cal members. Health Net of California Inc. has subsequently entered into the Agreement referenced above, and amendments to it, which are known among the parties as Capitation Agreement for Provision of Health Care Services and further identified as Agreement No. H. 210040, to allow PROVIDER to render such services to Health Net Community Solutions Inc.'s Medi-Cal members in Los Angeles county. Although in that Agreement, Health Net is referred to as "Contractor", for purposes of this Amendment, it and Health Net Community Solutions Inc. shall collectively be referred to as PLAN;

WHEREAS, PROVIDER, which includes a network of acute care hospitals and free standing clinics, has been experiencing economic losses in connection with making essential services available to the public, including PLAN Medi-Cal Enrollees and requires additional revenue in order to assure their continuing availability. Although in Agreement No. H 210040, the County was referred to as "County", for purposes of this Amendment, it shall be referred to by the designation listed above, or as the County of Los Angeles. Where appropriate given the context and in paragraph F below, PROVIDER may refer to individual health facilities owned and operated by the County of Los Angeles;

WHEREAS, PLAN and PROVIDER desire to amend the Agreement to provide for supplemental payments to PLAN as a result of intergovernmental transfers from the County of Los Angeles to the California Department of Health Care Services ("State DHCS") to maintain the availability of Medi-Cal health care services to Medi-Cal beneficiaries.

NOW, THEREFORE, PLAN and PROVIDER hereby agree as follows:

1. The following Paragraph shall be added:

42. MANAGED CARE SUPPLEMENTAL PAYMENT

1. Supplemental Payments to PLAN

A. Payment

Should PLAN receive any Medi-Cal managed care capitation rate increases from State DHCS where the nonfederal share is funded by the County of Los Angeles specifically pursuant to the provisions of the Intergovernmental Agreement Regarding Transfer of Public Funds ("Intergovernmental Agreement") effective for the period January 1, 2011 through June 30, 2011, for Intergovernmental Transfer Funded Rate Increases pursuant to Welfare and Institutions Code Section 14168.7 ("IGT Rate Increases") , PLAN shall pay to PROVIDER the amount of the IGT Rate Increases received from State DHCS, in accordance with paragraph 1.E below regarding the form and timing of Local Medi-Cal Managed Care Supplemental Payments ("LMSPs"). LMSPs paid to PROVIDER shall not replace or supplant any other amounts paid or payable to PROVIDER by PLAN, including but not limited to, amounts resulting from capitation rate range increases as described in section 14301.4(b)(4) of the Welfare and Institutions Code.

B. Health Plan Retention

1) Managed Care Organizations (MCO) Tax

The PLAN shall be responsible for any Managed Care Organization ("MCO") tax due pursuant to the Revenue and Taxation Code Section 12201 relating to any IGT Rate Increases. If the PLAN receives any capitation rate increases for MCO taxes based on the IGT Rate Increases, PLAN may retain an amount equal to the amount of such MCO tax that PLAN is required to pay to the State DHCS, and shall pay, as part of the LMSPs, the remaining amount of the capitation rate increase to PROVIDER.

2) PLAN will not retain any other portion of the IGT Rate Increases received from the State DHCS other than those mentioned above.

C. Conditions for Receiving Supplemental Payments

In addition to all other obligations imposed on PROVIDER by the Agreement, PROVIDER agrees that it will continue to make the following services available to PLAN's Medi-Cal enrollees through March 31, 2012:

- Level 1 TraumaCenters at LAC+USCMedicalCenter and Harbor/UCLA Medical Center;
- a basic emergency room at OliveViewMedicalCenter;
- a burn unit at LAC+USCMedicalCenter;
- a hyperbaric oxygen therapy chamber located on Catalina Island.

D. Schedule and Notice of Transfer of Non-Federal Funds

PROVIDER shall notify PLAN within five (5) days of the date of the transfer of funds to State DHCS pursuant to the Intergovernmental Agreement.

E. Form and Timing of Payments

PLAN agrees to pay LMSPs to PROVIDER in the following form and according to the following schedule:

(1) PLAN agrees to pay the LMSPs to PROVIDER using the same mechanism through which compensation and payments are normally paid to PROVIDER (e.g., electronic transfer).

(2) PLAN will pay the LMSPs to PROVIDER no later than thirty (30) calendar days after receipt of the IGT Rate Increases from State DHCS.

F. Consideration

(1) As consideration for the LMSPs, PROVIDER shall use the LMSPs for the following purposes and shall treat the LMSPs in the following manner:

(a) The LMSPs shall represent compensation for Medi-Cal services rendered to Medi-Cal PLAN members by PROVIDER and shall represent compensation for Medi-Cal services to Medi-Cal PLAN members during the State fiscal year to which the LMSP apply.

(b) To the extent that total payments received by PROVIDER in any State fiscal year under this Amendment exceed the cost of Medi-Cal services provided to Medi-Cal beneficiaries by PROVIDER during that fiscal year, any remaining LMSP amounts shall be retained by PROVIDER to be expended for health care services including but not limited to, the funding expenditures under the California Section 1115 Medicaid Demonstration entitled "California Bridge to Reform" (Waiver 11-W-00193/9). Retained LMSP amounts may be used by the PROVIDER in either the State fiscal year received or subsequent State fiscal years.

(2) For purposes of subsection (1) (b) above, if the LMSPs are not used by PROVIDER in the State fiscal year received, retention of funds by PROVIDER will be established by demonstrating that the retained earnings account of PROVIDER at the end of any State fiscal year in which it received payments based on LMSPs funded pursuant to the Intergovernmental Agreement, has increased over the unspent portion of the prior State fiscal year's balance by the amount of LMSPs received, but not used. These retained PROVIDER funds may be commingled with other County funds for cash management purposes provided that such funds are appropriately tracked and only the depositing facility is authorized to expend them.

(3) Both parties agree that none of these funds, either from the County of Los Angeles or federal matching funds, will be recycled back to the County general fund, the State, or any other intermediary organization. However, nothing in this section shall preclude the use of these funds as allowable sources under paragraphs 33 and 39 of the Special Terms and Conditions for the Section 115 Demonstration.

G. PLAN's Oversight Responsibilities

PLAN's oversight responsibilities regarding PROVIDER's use of the LMSPs shall be limited as described in this paragraph. PLAN shall request, within thirty (30) calendar days after the end of each State fiscal year in which LMSPs were transferred to PROVIDER, a written confirmation that states whether and how PROVIDER complied with the provisions set forth in Paragraph 1.F above. In each instance, PROVIDER shall provide PLAN with written confirmation of compliance within thirty (30) calendar days of PLAN's request.

H. Cooperation Among Parties

Should disputes or disagreements arise regarding the ultimate computation or appropriateness of any aspect of the LMSPs, PROVIDER and PLAN agree to work together in all respects to support and preserve the LMSPs to the full extent possible on behalf of the safety net in Los Angeles County.

I. Indemnification

Indemnification

1. Anything to the contrary contained in Paragraph 18 of this Agreement notwithstanding, PROVIDER shall indemnify and hold PLAN harmless against any losses, claims, demands, liabilities, court costs, judgments and expenses, imposed by a court or otherwise incurred by PLAN after the execution date of this Amendment as a result of PLAN's receipt of IGT Rate Increases or payment of LMSPs, including but not limited to the following circumstances:

2. In the event that State DHCS, the Department of Health and Human Services or any other federal or state agency recoups, offsets, or otherwise withholds any monies from or fails to provide any monies to PLAN, or PLAN is denied any monies to which it otherwise would have been entitled, for any reason relating to the Medi-Cal managed care capitation rate increases arising from the Intergovernmental Agreement as such increases flow through the Medi-Cal Agreement between PLAN and the State and this Agreement, including but not limited to (a) State DHCS' use of IGT Rate Increases or LMSPs to supplant or replace other amount in violation of the restrictions in Section 2.2 of the Intergovernmental Agreement; (b) the failure of the IGT Rate Increases to qualify in whole or part for federal participation pursuant to 42 C.F.R. part 433, subpart B; or (c) overpayment of IGT Rate Increases to PLAN by State DHCS, PLAN shall have a right to immediately recoup, offset or withhold any and all such amounts from payments otherwise due to PROVIDER. Recovery by PLAN pursuant to this section shall include, but not be limited to, reduction in future LMSPs paid to PROVIDER in an amount equal to the amount of SMCRI payments recovered from PLAN, or by reduction of any other amounts owed by PLAN to PROVIDER;

3. PLAN shall pursue an appeal, a lawsuit, or any other available legal action to challenge any recoupment by State DHCS, the Department of Health and Human Services, or any other federal or state agency, that is not required by law, unless after

consultation with PROVIDER and with good cause, PLAN determines that it is not in the best interest of PLAN and/or PROVIDER to do so;

i. At PLAN's discretion, PROVIDER shall either provide or arrange for legal representation on PLAN's behalf or PLAN shall arrange for its own representation and be entitled to reasonable attorney's fees and costs from PROVIDER for such representation, in addition to any and all other relief to which PLAN may be entitled, including, but not limited to, the following circumstances:

(1) If any action at law, suit in equity, arbitration, or administrative action is brought against PLAN by State DHCS, the Department of Health and Human Services, any other federal or state agency or other individual or organization to: (i) enforce or interpret the IGT Rate Increases or LMSPs; or (ii) recoup, offset, or otherwise withhold any monies from PLAN relating to the IGT Rate Increases or LMSPs; or

(2) If PLAN brings any appeal, action at law, suit in equity, arbitration or administrative action against the State DHCS, the Department of Health and Human Services or any other federal or state agency to (i) enforce or interpret the IGT Rate Increases or LMSPs; or (ii) in response to an action described in subparagraph 1 or subparagraph 3(i)(1) above:

ii. If PLAN prevails in any appeal, action at law, suit in equity, arbitration, or administrative action against PROVIDER to enforce or interpret the IGT Rate Increases or LMSPs or to recoup, offset, or otherwise withhold any monies relating to the IGT Rate Increases or LMSPs, PLAN shall be entitled to reasonable attorney's fees and costs from PROVIDER; and

iii. In the event that PLAN believes that it is subject to any losses, claims, demands, liabilities, court costs, judgments or obligations to third parties which arise before the execution of this Amendment as a direct result of the parties' intention to enter into this Amendment or the terms of this Amendment, PLAN shall promptly notify PROVIDER of such belief. The parties will then negotiate, in good faith, the extent to which PROVIDER will provide indemnification. It is the parties' intention that PLAN not be substantially economically harmed as a result of its willingness to enter into this Amendment.

2. Term

The term of this Amendment shall commence on January 1, 2011 and shall terminate on January 30, 2013 for IGT payments made during the 2011/12 FY, except for paragraphs 1.F, 1.G, 1.H and 1.I above which shall survive the termination of this Amendment and/or the underlying Agreement.

All other terms and provisions of said Agreement shall remain in full force and effect so that all rights, duties and obligations, and liabilities of the parties hereto otherwise remain unchanged; provided, however, if there is any conflict between the terms of this Amendment and the Agreement, then the terms of this Amendment shall govern.

SIGNATURES

HEALTH PLAN: _____ Date: _____

By: Title: Chair, _____

PROVIDER: _____ Date: _____

By: Title: Chief Executive Officer _____